

YOUR RIGHTS REGARDING RESTRAINING ORDERS

This pamphlet describes the rights of people with mental illness to obtain and defend against restraining orders.

What is a restraining order?

If someone has been hit, threatened, forced to have sex, or abused in other ways, s/he has the right to ask a court for a restraining order (also called "Abuse Prevention Orders" or "209A" orders) to prevent the abuse.

A restraining order is a court order initiated by a person who believes s/he has been abused and wants protection from the abuse. People may think that only women get restraining orders against men but that is not always the case, especially when someone has a mental illness.

What are the consequences of a restraining order?

There are many consequences of a restraining order. In a restraining order, a judge may order that a person:

- stop abusing you;
- leave your home even if the person owns or pays rent for the home;
- not contact you and stay away from you, your home, your work, and/or your children;
- pay child support;
- pay living expenses if you are married;
- pay for expenses you have had because of the abuse, such as medical expenses, property damage, or lost wages;
- give up any firearms;
- *should* attend a batterer's treatment program.

In addition, a judge can order that that you have temporary custody of your children and that your address be "impounded" which means that it be kept secret.

A major consequence is that the restraining order is likely to require you to leave your home, if you live with the person who receives the order. If you have children, a restraining order could prevent you from getting custody of or visitation with your children.

In addition, the issuance of a restraining order automatically enters your name into a statewide domestic violence registry. This could potentially affect you later when you try to apply for certain jobs or try for a promotion, for example. It is very difficult to remove your name from this registry, even if the restraining order against you was dismissed. Ask the judge to vacate the order "*nunc pro tunc*" which means that the order will be dismissed back to the date it was originally issued. If the judge does this, your name should be removed from the registry.

Who may get a restraining order?

You can apply for a restraining order if you have been abused by:

- your husband or wife (or ex-husband or ex-wife);
- a household member or former household member (roommate);
- the other parent of your child;

- a blood relative or someone related to you by marriage (for example, siblings, parents, or in-laws);
- anyone with whom you have had a substantial dating relationship.

You also need to prove that this person abused you. Abuse is defined as:

- attempting to cause or causing you or your children physical harm;
- placing you or your children in fear of "imminent" (near and threatening) serious physical harm;
- using force, threat or duress to cause you to have sexual relations.

In other words, you need to show the court that the person physically harmed you or that you have good reason to believe that the person will harm you in the near future.

Who issues restraining order?

You can get a restraining order at your local District Court, Probate & Family Court, or Superior Court during regular business hours. You can also get restraining orders when the courts are closed. You can file for an emergency 24-hour restraining order at your local police station, or you may call the police and file for the order over the telephone. However, if you get this kind of order, you need to go to court the next business day. Deciding which court to go to (usually the District Court or the Probate & Family Court) depends on the circumstances of your case.

The District Court

The District Court cannot order visitation between the abusive person and his/her children. Therefore, if you do not want the court to order visitation, you should go to the District Court. The District Court also has staff called Victim-Witness Advocates who can assist victims of domestic violence with this process.

The Probate & Family Court

The Probate & Family Court is the only type of court that can order custody and visitation between the abusive person and his/her children. It may be important to you to decide issues of custody and visitation right away. In these cases, you should file for a restraining order in the Probate & Family Court. The Probate & Family Court can also change or override the District Court's restraining order.

What steps are required to get a restraining order?

To get a restraining order at a courthouse, you need to do three things: (1) fill out a Complaint, (2) on that same day, go to a hearing to tell the judge why you want the restraining order, and (3) go back to the courthouse later for another hearing, usually called a 10-day hearing, where the defendant will have a chance to tell his/her side of the story.

Complaint

The first step is to go to the courthouse to fill out an application for a restraining order, which is called a Complaint. You should go to an office at the courthouse, sometimes called the Registry or Clerk where someone will show you how to fill out the forms. The most important form you need to complete is the Affidavit, which describes the abuse. Domestic violence advocates or clerks are usually available to explain what to do.

Initial Hearing

After filling out the forms, you will go into the courtroom, be sworn in by a clerk, and appear before a judge. This is called a Hearing. The person who abused you will not be at this hearing, because s/he does not yet know that you are filing for a restraining order.

The judge may ask you questions about why you want a restraining order. With as much detail as possible, you should describe the most recent abusive event and also describe how the person has abused you or threatened you in the past. If your children witnessed the abuse or were also abused, it is important for you to tell the judge.

10-day Hearing

You will have to come back to court later for another hearing, usually called the 10-day hearing. In the meantime, the person who has abused you will get notice of this hearing, called service. At this hearing, this person will have an opportunity to tell the judge his/her side of the story.

If you have any witnesses who have seen the person's abusive behavior, you should bring that person to court with you. If you have any documents that show you have been abused, you should bring them with you to court as well. For example, you might want to bring photographs of your injuries, your medical records, police reports, answering machine tapes with recorded threats, or letters that contain threats or admit the abuse. This evidence will be helpful if the person tries to claim that you are making up the abuse due to mental illness.

If you think the abusive person might try to claim that you are not fit to take care of your children, you could bring a letter from your doctor or therapist explaining that your illness does not affect your ability to parent. You may also want to bring a supportive person to court with you to strengthen your testimony, such as your clubhouse advocate, your therapist, your coworker, or a friend or family member. The court often likes to hear a professional opinion to help make its decision easier.

What steps are required to defend against a restraining order?

If someone has filed a restraining order against you, you will be served by the police or by mail. However, you will not be served with a copy of the Complaint application, or the Affidavit, so you should get a copy before the hearing. You have the right to appear at the hearing, present evidence, testify, and cross-examine (question) witnesses. In other words, you have the opportunity to tell your side of the story.

If you are served with a restraining order, you should appear at the hearing if you want to contest the order. The judge and the court staff pay close attention to the behavior of everyone in the courtroom. The judge will observe what time, you arrive, what you wear, how you act towards the other person, and your attitude towards the court.

In order to issue a restraining order against you, the judge must find that you caused or attempted to cause physical harm, or that you put someone in fear of imminent serious physical harm, or that you caused someone to have sexual relations with you by using force, threat or duress. If none of these standards are met, the judge should not issue a restraining order against you.

How you defend yourself depends on the circumstances of your case. If you believe that someone is trying to get a restraining order against you solely because you have a mental illness, but s/he cannot meet the legal standard, you should argue that s/he is not entitled to a restraining order.

Perhaps the person seeking the restraining order against you actually has been abusive to you. In that case, you would want to bring to the hearing old or current restraining orders that *you* filed against the person. You may also want to bring medical records, police reports, photographs, or witnesses that document the past abuse. If someone is abusing you however, and you fight back in defense, you too may be held accountable.

You should try to get an attorney to come to the hearing with you, but if you cannot obtain an attorney, you should try to bring a doctor, therapist, case manager, clubhouse advocate, family member, or friend with you to strengthen your testimony. You should also present evidence on your own behalf that balances the judge's view of you, and informs the judge that mental illness does not necessarily make you unstable, violent, or a bad parent. For example, you might show that you have steady employment, clubhouse membership and/or participation in a day program; that you have strong family support; that you have consistent and loving relationships with your children; that you consistently pay child support for your children; or that you are involved in your community.

Restraining orders generally last for one year. If you believe that the judge is going to issue a restraining order against you, you could ask that the order be issued for a shorter period of time, such as three or six months. You could also ask the judge to make sure that the order does not apply to your children, so that you can have regular contact with them.

What is a violation of a restraining order?

A violation of a restraining order will often result in arrest, and is a criminal offense. It is important to note that you will be in violation of the order if you do ANYTHING that the order prohibits you from doing. For example, if the order prohibits you from contacting your spouse and child, you will be in violation of the order if you send your child a gift, or call your spouse to tell him/her you are sorry. You are not even allowed to have someone talk to the person for you. The courts look at every violation as a violation and it does not matter that you had good intentions.

To report a violation of a restraining order, you need to call the police or go to the police station. If there is a restraining order against you, but the person who filed the order repeatedly tries to have contact with you, you may go to court to ask the judge to vacate the restraining order.

Whether you are seeking a restraining order or defending yourself against one, it is important to seek legal advice before you go to court.

For More Information Contact:

**Mental Health Legal Advisors Committee
399 Washington Street, 4th Floor
Boston, MA 02108
(617) 338-2345
(800) 342-9092**

Intake Hours: Monday, Wednesday & Friday 8:30 a.m. to 1 p.m.